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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,112	02/04/2002	Henricus Renier Gerardus Steeghs	ASC5695US2	7400

7590 09/03/2002

LAINIE E. PARKER  
AKZO NOBEL INC.  
7 LIVINGSTONE AVENUE  
DOBBS FERRY, NY 10522-3408

EXAMINER

ANDREWS, MELVYN J

ART UNIT	PAPER NUMBER
1742	9

DATE MAILED: 09/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/067,112	STEEGHS ET AL.	
	Examiner	Art Unit	
	Melvyn J. Andrews	1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 25 July 2002 05 June 2002 29 May 2002.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1,3,4,7-9,11,12,15-17,19-22,24-26 and 37-47 is/are pending in the application.

4a) Of the above claim(s) 9,11,12,15,16,22,24-26,37-40,42 and 44-46 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,3,4,7,8,17,19-21,41,43 and 47 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election with traverse of Group I in Paper No. 6 is acknowledged. The traversal is on the ground(s) that set forth in Paper No.6. This is not found persuasive for the reasons set forth in Paper No.3 because with respect to Group II a starch is not guar so that that two distinct processes are being claimed even if classified in the same class and subclass and with respect to Group III Claims 9 and 11 are drawn to a pellet which is distinct from the process of Group I for the reasons set forth in Paper No.3; furthermore, a product defined by the process by which it can be made is still a product claim. *In re Bridgeford*, 149 USPQ 55

The requirement is still deemed proper and is therefore made FINAL.

Claims 9, 11, 12, 15, 16, 22, 24, 25, 26, 37, 38, 39, 40, 42, 44, 45, and 46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a non-elected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 3

***Double Patenting***

Claims 1, 3, 4, 7, 8, 41, and 47 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 7, 8, 45 and 50 of copending Application No. 08/032,525. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '525 claims may include compositions consisting of guar and citric, malic or tartaric acid.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3, 4, 7, 8, 41 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banyai et al, U.S. Patent No.4,919,711. Banyai et al discloses a binder composition for metal-containing ores but does not disclose specific example of a binder of guar and sodium citrate but does disclose guar (see col.4, line 4) and sodium citrate (see col.4, line 11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a binder including guar and sodium citrate because they are disclosed as suitable for the Banyai et al formulation; but Banyai et al does not explicitly disclose, as in Claim 1, a process of commingling metallic ore with a moistening effective amount of water and a binding effective amount of a weak acid , but it reasonably appears that metal ions in the water will combine with the acid to form a salt such that the recitation of adding these components such as citric acid is tantamount to reciting that a salt of the weak acid is added.

Claims 1, 3, 4, 7, 8, 41 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banyai et al as applied to claims 1, 3, 7, 8 and 45 above, and further in view of Rooda et (U.S.4,597,797). The patent to Banyai et al does not explicitly disclose "a binding effective amount of malic acid, tartaric acid or mixtures thereof" but discloses that exemplary inorganic salts include not only sodium citrate but also the salts described by Roorda et al (U.S. 4,288,245) (see Banyai et al col.4, lines 5 to 11) which discloses compositions for agglomerating a metal-containing ore material which include salts derived from tartaric acid and citric acid (col.1,line 58 to col.2, line 2), it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute tartaric acid for citric acid in the Banyai et al formulation because

tartaric acid and citric acid are regarded as equivalents for inclusion in binder formulations.

Claims 1, 3, 7, 8, 41 and 47 rejected under 35 U.S.C. 103(a) as being unpatentable over Banyai et al, alone or in view of Rooda et al as applied to claims 1, 3, 4, 7, 8, 41 and 47 above, and further in view of Stafford (U.S. 3,591,543) The patent to Banyai et al explicitly discloses sodium citrate(col.4, line 11) and Rooda et al explicitly discloses a salts derived from weak acids such as tartaric acid and citric acid (col.1, lines 53 to 65) but do not explicitly add weak acids but Stafford (U.S. 3,591,543) discloses a method of gelling in which there also must be present a water-soluble organic acid salt such as sodium citrate, the salt may be added as such or it may be formed in situ, for example by the addition of a water-soluble organic acid of 1 to 6 carbon atoms and a water soluble alkali metal hydroxide oxide (col.4, lines 17 to 21), it would have been obvious to one of ordinary skill in the art at the time the invention was made to form a salt such as sodium citrate as in the disclosed Banyai et al and Rooda by adding citric acid together with sodium hydroxide to cause the formation of the . . .

Claims 17, 19, 20, 21 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banyai et al, U.S. Patent No.4,919,711. Banyai et al discloses a binder for metal-containing ores but does not disclose a specific example of a binder of guar and sodium citrate but does disclose guar (see col.4, line4) and sodium citrate (see col.4, line 11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a binder including guar and sodium citrate because they are disclosed as suitable for the Banyai et al formulation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvyn J. Andrews whose telephone number is 703-308-3739. The examiner can normally be reached on 8:00A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy V King can be reached on 703-308-1146. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



MELVYN ANDREWS  
PRIMARY EXAMINER

mja  
August 29, 2002